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**RULE PROPOSALS**

**LAW AND PUBLIC SAFETY**

**OFFICE OF HIGHWAY TRAFFIC SAFETY**

*40 N.J.R. 1613(a)*

**Proposed New Rules: N.J.A.C. 13:86B**

[Click here to view Interested Persons Statement](#)

**Qualifying Nonprofit Organizations**

Authorized By: Pamela Fischer, Director, Office of Highway Traffic Safety.

Authority: N.J.S.A. 27:5F-29c(8).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2008-63.

Submit written comments by May 16, 2008 to:

Director Pamela Fischer

Office of Highway Traffic Safety

P.O. Box 048

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The agency proposal follows:

**Summary**

Pursuant to the New Jersey Highway Traffic Safety Act of 1987, *N.J.S.A. 27:5F-18* et seq., the Office of Highway Traffic Safety (OHTS) is charged with administering the State's highway traffic safety program on behalf of the Governor and under the supervision of the Attorney General. This program is funded with Federal monies received by the State under the "U.S. Highway Traffic Safety Act of 1966" (Pub. L. 89-564; 23 *U.S.C. §§401-404*) and any acts amendatory or supplementary thereto. The New Jersey Highway Traffic Safety Act as amended by P.L. 2007, c. 84, permits, effective March 16, 2008, "qualifying" nonprofit organizations (NPO) to apply for highway traffic safety project grants for programs approved by the Director of the Office of Highway Traffic Safety. The Act authorizes the Director to adopt criteria by which a nonprofit organization shall qualify for the award of a grant for a program

approved by the Director, including, but not limited to, criteria established by the Legislature and specifying the types of programs for which an NPO may be awarded a grant. Prior to the amendments, the Act only permitted the award of grants to State agencies and agencies of a political subdivision of the State, such as a municipality or county.

Proposed new Subchapter 1 contains general provisions, including the scope and purpose of the rules, the authority for promulgating them, and definitions of terms used throughout the rules. The terms are self-explanatory.

Proposed new Subchapter 2 contains rules establishing the criteria by which a nonprofit organization may qualify to apply for a grant and the documents and information necessary to demonstrate the NPO meets the criteria.

Proposed new rule N.J.A.C. 13:86B-2.1 sets forth the criteria an NPO must meet to be a qualifying NPO eligible to apply for a grant. It contains the criteria established by the Legislature at N.J.S.A. 27:5F-20h and 29c(8). These are that the NPO must be tax exempt under Section 501c(3) of the Federal Internal Revenue Code and not a private foundation as defined in section 509(a) of the Code. The NPO must also provide services throughout the State, be operated primarily for scientific, educational, service, charitable or similar purposes in the public interest and have a demonstrable record of conducting highway traffic safety programs. The remainder of the proposed new section sets forth the additional qualifying criteria the Director would establish. These include the NPO's incorporation under New Jersey law as nonprofit corporation or its legal organization under other New Jersey law for a period of at least one year from the date of its application for a grant; that if the NPO is engaged in fundraising it be registered with the Division of Consumer Affairs; and that the services provided throughout the State by the NPO, if required by New Jersey law, be registered with or licensed or otherwise approved by a State or local government agency. Paragraph (a)9 references additional qualifying criteria if the NPO seeks to submit an application on behalf of a grant to train first responders and emergency medical technicians employed by the NPO. Paragraph (a)10 references additional qualifying criteria if the NPO seeks to submit an application for a grant on behalf of hospitals and other entities. See the discussion of proposed new N.J.A.C. 13:86B-3.2 below.

Proposed new rule N.J.A.C. 13:86B-2.2 requires the NPO to attach to its application a resolution from its governing body authorizing the application. It also establishes the documents and information the NPO must attach to the grant application to demonstrate compliance with the qualifying criteria. The NPO can supply requested information by way of its annual report or other publication or a written submission certified by an officer of the NPO. The rule requires a letter from the Federal Internal Revenue Service confirming the NPO's status under Section 501(c) 3 of the *Federal Internal Revenue Code* and the information needed to establish the NPO provides services throughout the State. Paragraphs (a)3, 5 and 6 are related. Paragraph (a)5 requires a copy of the NPO's certificate of incorporation under *N.J.S.A. 15A:1-1* et seq. or other organizing document, its by-laws or governing rules, and the names of trustees, directors, or other governing officials, and all officers. These are likely to demonstrate compliance with the requirement that the NPO is operated primarily for scientific, educational, service, charitable or similar purposes in the public interest, and that it has been organized for at least one year prior to the date of its application. (Paragraphs (a)3 and 6). Paragraph (a)4 requires a description of highway traffic safety programs the NPO has conducted during the year immediately prior to the date of its application and related information. Paragraph (a)7 requires a description of any activities conducted by the NPO that require registration with the Division of Consumers Affairs pursuant to the Charities Registration and Investigation Act, *N.J.S.A. 45:17A-18* et seq., and a copy of the valid registration. Paragraph (a)8 requires a copy of any registration, license or other approval required by a State or local government agency to provide the services offered by the NPO throughout the State, including registration to do business in the State as required by P.L. 2004, c. 57. Paragraph (a)9 requires an NPO that is seeking to apply for a grant to train first responders and emergency medical technicians employed by the NPO to provide a list of such employees.

Proposed new rule N.J.A.C. 13:86B-3.1 identifies the types of approved programs for which a qualifying NPO may be awarded a grant. Paragraph (a)1 identifies six specific highway traffic safety program areas in which the qualifying NPO may provide a public information or education program. The proposed rule includes three other approved program areas: to conduct surveys of highway safety issues; to conduct studies of available crash data; and to provide training and other activities for employees of the NPO serving as first responders and emergency medical technicians that are

designed to reduce crash-related trauma.

Proposed new rule N.J.A.C. 13:86B-3.2 addresses that section of the amended NJHTS Act that now permits qualifying NPOs to submit an application on behalf of a hospital, volunteer or non-volunteer first aid, rescue or ambulance squad or other local entity serving a public purpose for a grant to implement an emergency services program. The proposed new rule requires the NPO to meet all qualifying criteria set forth in proposed new Subchapter 2. The NPO must also demonstrate that it has a record of conducting programs related to providing emergency medical services to the public and that during a one year period immediately prior to the date of the application it had a working relationship with the entity on whose behalf it applies for the grant.

Proposed new Subchapter 4 contains the rules that govern the Director's determination as to whether the NPO has met the qualifying criteria.

Proposed new rule N.J.A.C. 13:86B-4.1 authorizes the Director to request required documents or information not provided by the NPO or additional information needed to clarify the NPO's compliance with any criteria and requires a response from the NPO within 15 days. If the NPO fails to respond within this time period, the Director shall return the application as incomplete.

Proposed new rule N.J.A.C. 13:86B-4.2 authorizes three determinations. Subsection (a) permits the Director, upon determination that the NPO has failed to meet the qualifying criteria, to return the application to the NPO and to identify in writing the criteria the NPO has failed to meet. Subsection (b) permits the Director to return the application to the NPO when the Director determines that, although the NPO has met all qualifying criteria, it has submitted an application for an unapproved program. The Director is to explain in writing the reason for the application's return. Subsection (c) authorizes the Director to accept the application for processing in accordance with N.J.S.A. 27:5F-29c(8) upon finding that the NPO has met the qualifying criteria and has submitted an application for an approved program.

Because the Office has provided a 60-day comment period, this proposal is exempt from the rulemaking calendar requirement pursuant to *N.J.A.C. 1:30-3.3(a)5*.

### **Social Impact**

Private sector entities have for many years participated as partners in the programs of the OHTS. The proposed rules implement the Legislature's intent to support NPOs experienced at delivering services throughout the State and with a record of conducting highway traffic safety programs by permitting them to qualify for a grant of Federal monies to support programs approved by the Director. Consequently, the highway traffic safety programs of the NPOs that receive such awards will be fully integrated into the State Highway Traffic Safety Plan. The OHTS anticipates that awarding a grant to a qualifying NPO will have the effect of expanding the overall effectiveness of such programs by reaching segments of the public served by the NPO throughout the State and more effectively coordinating private and public efforts to improve highway traffic safety in the State.

### **Economic Impact**

The economic impact on qualifying NPOs who receive a grant will be beneficial as it will provide funding to support highway traffic safety-related activities from a source distinct from those sources needed to deliver non-traffic safety related services. The NJHTS Act requires that at least 40 percent of funds awarded to the State under 23 U.S.C. §402 must be expended by or for the benefit of the State's political subdivisions. See *N.J.S.A. 27:5F-25*. This required minimum percentage of funding allocated to local political subdivisions will be unaffected by the eligibility of qualifying NPOs to apply for grants.

### **Federal Standards Statement**

A Federal standards analysis is not required because the U.S. Highway Traffic Safety Act of 1996 as supplemented and amended (23 U.S.C. §§401-404) and regulations promulgated by the National Highway Traffic Safety Administration (23 CFR Parts 1200 and 1350) do not contain standards and requirements as to the qualifications an NPO must meet to receive a subgrant from the State.

**Jobs Impact**

The OHTS anticipates that new jobs may be created by those qualifying NPOs, which receive a grant because they will need staff to administer and oversee the grant program.

**Agriculture Industry Impact**

The OHTS does not anticipate that the proposed new rules will have any impact on the agriculture industry.

**Regulatory Flexibility Statement**

To the extent an NPO may meet the definition of small business as defined by the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq., the proposed new rules do not impose any reporting, recordkeeping or other compliance requirements to establish that the NPO is qualified to apply for a grant approved by the Director. It does require an NPO that seeks to establish it meets qualifying criteria to submit documentation and statistics. However, if such a grant is awarded to the qualifying NPO, the NPO will be subject to all reporting, recordkeeping or other compliance required by State agencies and agencies of political subdivisions within the State, which are required by Federal and State government with respect to such grants. These requirements are beyond the jurisdiction of the OHTS.

**Smart Growth Impact**

The proposed new rules will have no impact on the achievement of smart growth or implementation of the State Development and Redevelopment Plan.

**Full text** of the proposed new rules follows:

CHAPTER 86B  
QUALIFYING NONPROFIT ORGANIZATIONS

SUBCHAPTER 1. GENERAL PROVISIONS

13:86B-1.1 Purpose and scope

The rules in this chapter establish the criteria that nonprofit organizations must meet to qualify as an applicant for the award of a Federally funded highway traffic safety project grant for programs approved by the Director of the Office of Highway Traffic Safety.

13:86B-1.2 Authority

These rules are promulgated by the Director of the Office of Highway Traffic Safety pursuant to N.J.S.A. 27:5F-29c(8) of the New Jersey Highway Traffic Safety Act of 1987 as amended by P.L. 2007, c. 84.

13:86B-1.3 Definitions

The following words and terms are defined as follows for the purpose of these rules unless the context in which they are used indicates otherwise:

"Application" means the application form available from the OHTS to apply for a Federally funded highway traffic safety project grant pursuant to the NJHTS Act.

"Approved program" means a highway traffic safety program approved by the Director for which a grant may be awarded to a qualifying NPO.

"Director" means the Director of the Office of Highway Traffic Safety in the Department of Law and Public Safety.

"Grant" means a highway traffic safety project grant funded with Federal monies awarded by the OHTS.

"NJHTS Act" or "Act" means the New Jersey Highway Traffic Safety Act of 1987 (*N.J.S.A. 27:5F-18 et seq.*).

"NPO" means a nonprofit organization.

"OHTS" means the Office of Highway Traffic Safety in the Department of Law and Public Safety.

"Qualifying or qualified NPO" means an NPO that meets the criteria established by these rules to apply for a grant for an approved program.

## SUBCHAPTER 2. QUALIFYING NPOS AND APPLICATION

### 13:86B-2.1 Criteria to establish applicant is a qualifying NPO

(a) A qualifying NPO shall be eligible to apply for the award of a grant for an approved program. An NPO must meet all of the following criteria to be a qualifying NPO:

1. Is tax exempt under section 501(c) 3 of the *Federal Internal Revenue Code* (26 U.S.C. §501(c)3) and is not a private foundation as defined in section 509(a) of the *Federal Internal Revenue Code* (26 U.S.C. §509(a));
2. Provide services throughout the State;
3. Is operated primarily for scientific, educational, service, charitable or similar purposes in the public interest;
4. Has a demonstrable record of conducting highway traffic safety programs;
5. Is organized under the provisions of the New Jersey Nonprofit Corporation Act, *N.J.S.A. 15A:1-1 et seq.* or pursuant to other New Jersey statutory authority to operate in the State;
6. Has been organized for a period of at least one year immediately prior to the date of its application for a grant;
7. If engaged in fundraising activities subject to the Charitable Registration and Investigation Act, *N.J.S.A. 45:17A-18 et seq.* is registered with the New Jersey Division of Consumer Affairs in the Department of Law and Public Safety;
8. If engaged in providing services that require registration with or licensing or other approval by a State or local government agency, is the holder of such valid registration, license or other approval issued by the agency, including a registration to do business with the State as required by P.L. 2004, c. 5;
9. If applying for a grant authorized at N.J.A.C. 13:86B-3.1(a)4, is the employer of staff who perform the duties of first responders and emergency medical technicians; and

10. If applying for a grant on behalf of another entity in accordance with N.J.A.C. 13:86B-3.2, meets the additional criteria set forth in that rule.

13:86B-2.2 Application to demonstrate compliance with qualifying criteria

(a) The NPO shall attach to its application for a grant, a resolution from its governing body authorizing the application. To demonstrate compliance with each of the qualifying criteria set forth in N.J.A.C. 13:86B-2.1, the NPO shall also attach to its application the documents and information set forth below. The NPO may supply such information by way of an annual report or other organizational report or publication or a written submission certified to by an officer of the NPO.

1. A letter from the Federal Internal Revenue Service confirming that the NPO is tax exempt under section 501(c) 3 of the *Federal Internal Revenue Code* and is not a private foundation, as defined by section 509(a) of the *Federal Internal Revenue Code*;

2. A description of the services provided by the NPO throughout the State during the year immediately prior to the date of its application and information to demonstrate the following:

i. That the receipt of the services provided by the NPO does not require the recipient to be a resident of a particular municipality or county and that no preference is given to residents of a particular municipality or county;

ii. That the NPO maintains a toll-free phone number, a website and an e-mail address by which the public can contact the NPO to acquire or arrange for the delivery of its services;

iii. The number of persons in the State who have received services from the NPO during the year immediately prior to the date of its application; and

iv. That the services provided by the NPO are available at a location or can be delivered to residents in a majority of the counties in the State;

3. That the NPO is operated primarily for scientific, educational, service, charitable or similar purposes in the public interest;

4. A description of all highway traffic safety programs conducted by the NPO during the year immediately prior to the date of its application, the subject matter of which is related to an approved program area established by N.J.A.C. 13:86-3.1, including the dates during which the NPO conducted the program, whether it was conducted on a local or Statewide basis, and statistics showing the number of persons who participated in the program;

5. A certified copy of the NPO's certificate of incorporation in New Jersey pursuant to N.J.S.A. 15A-1 et seq. or other organizing document that authorizes it to operate in New Jersey, a copy of its by-laws or governing rules, and the names of all members of its board of trustees or board of directors or other governing body and all officers;

6. That it has been organized for at least one year immediately prior to the date of its application;

7. A description of any activities conducted by the NPO that require registration with the Division of Consumer Affairs pursuant to the Charitable Registration and Investigation Act, *N.J.S.A. 45:17A-18* et seq., and a copy of such valid registration;

8. A copy of any valid registration, license or other approval required by a State or local government agency to provide

the services offered by the NPO throughout the State, including registration to do business in the State of New Jersey pursuant to P.L. 2004, c. 57; and

9. If applying for a grant authorized by N.J.A.C. 13:86B-3.1(a)4, a list of all employees who perform the duties of first responders and emergency medical technicians.

### SUBCHAPTER 3. APPROVED PROGRAMS IDENTIFIED BY THE DIRECTOR

#### 13:86B-3.1 Types of approved programs

(a) A qualifying NPO is eligible to apply for a grant to implement highway traffic safety projects in any of the following program areas or in such additional program areas as the Director may approve and identify in a Notice of Availability of Funds published in accordance with *N.J.S.A. 52:14-34.4*:

1. To provide public information and educational programs for any of the following purposes:
  - i. To curtail alcohol and drug use while driving;
  - ii. To promote occupant protection, pedestrian, and bicycle safety;
  - iii. To assist in the implementation of community traffic safety programs that will increase the public's awareness of traffic safety issues at the local level or Statewide;
  - iv. To promote motorcycle safety education, training, and motorist awareness;
  - v. To promote the safe movement of traffic by obeying traffic control devices, signs, and pavement markings; or
  - vi. To reduce crash-related trauma;
2. To conduct surveys on highway traffic safety issues that will be used to develop public information and/or education programs;
3. To study crash data that is available to the public; or
4. To provide first responders and emergency medical technicians employed by the qualifying NPO training and other activities designed to reduce crash-related trauma.

#### 13:86B-3.2 Approved program when applying for grant on behalf of others

(a) In accordance with *N.J.S.A. 27:5F-26*, a qualifying NPO may submit an application on behalf of a hospital, volunteer or nonvolunteer first aid, rescue or ambulance squad or other local entity serving a public purpose for a grant of money to implement an emergency medical services program provided it meets all of the criteria set forth in Subchapter 2 and the following additional criteria:

1. The qualifying NPO demonstrates that it has record of conducting highway traffic safety programs related to the providing of emergency medical services to the public; and
2. The qualifying NPO demonstrates that it has had for a period of one year immediately prior to the date of the application a working relationship with the hospital, volunteer or nonvolunteer first aid, rescue or ambulance squad or other local entity serving a public purpose. The NPO shall demonstrate a working relationship during the one year

period by attaching to the application a description of the services it has provided or activities it has engaged in conjunction with the entity on whose behalf it is submitting the application.

#### SUBCHAPTER 4. ADDITIONAL INFORMATION/DETERMINATION

##### 13:86B-4.1 Additional information required by the director

The OHTS shall review the application for the grant to determine whether the NPO has provided all documents and information required by N.J.A.C. 13:86B-2.1. In the event that the NPO has not provided a required document or other required information or further information is needed to clarify whether the NPO has met all qualifying criteria, the Director shall contact the NPO in writing to request the document or additional information needed. Within 15 days from the receipt of the request, the NPO shall provide such document or respond in writing to the additional information requested. In the event that the NPO fails to provide the document or other information required, the Director shall return the application as incomplete.

##### 13:86B-4.2 Determination NPO is qualifying/acceptance

- (a) If the Director determines based on the documents and information provided in accordance with N.J.A.C. 13:86B-2.1 that the NPO does not meet all of the criteria to establish that it is a qualifying NPO, the Director shall return the grant application to the NPO and identify in writing the criteria the NPO has failed to demonstrate.
- (b) If the Director determines based on the documents and information provided in accordance with *N.J.A.C. 13:86-2.1* that the NPO has met all of the criteria to establish that it is a qualifying NPO and is, therefore, eligible to apply for a grant, but has submitted an application for a grant in an unapproved program area, the Director shall return the grant application and explain in writing the reasons for its return.
- (c) If the Director determines based on the documents and information provided in accordance with *N.J.A.C. 13:86-2.1* that the NPO has met all of the criteria to establish that it is a qualifying NPO and the application is submitted for a grant in an approved program area, the Director shall accept the application for processing in accordance with N.J.S.A. 27:5F-29c(8).